IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 18497 of 2004(B)

PETITIONERS:

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1. **S.RAJENDRA BABU, S/O. N.SREEDHARAN, AGED 37 YEARS, P.S.C. EMPANELLED CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM AND RESIDING AT ASWATHY, MASOOR, KUDAVATTOOR P.O., KOLLAM.**

2. **BINUMON, S/O. BHASKARAN, AGED 30 YEARS, P.S.C EMPANELLED CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM AND RESIDING AT NELLIVILA KIZHAKKETHIL VEEDU, KARUVELIL P.O., EZHUKONE, KOLLAM.**

3. **L.SUDHAKARAN, S/O. LAKSHMANAN, AGED 44 YEARS, P.S.C. EMPANELLED CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM AND RESIDING AT THEVARUPOIKA VEEDU, EDAKKIDOM P.O. KOLLAM.**

4. **SURESH N., S/O. NANU K., AGED 34 YEARS, P.S.C.EMPANELLED CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM AND RESIDING AT NEDUNTHARA VADAKKATHIL, AITHOTTUVA, WEST KALLADA P.O., KOLLAM.**

5. **R.JAYAKRISHNAN, S/O. RADHAKRISHNAN NAIR, AGED 28 YEARS, P.S.C. EMPANELLED CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM AND RESIDING AT VELAYUDHAVILASOM, ULACODU, VAKKANADU P.O., KUZHIMATHIKKADU, KOLLAM.**

6. **SHAJI S., S/O. SOMAN, AGED 30 YEARS, P.S.C. EMPANELLED CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM AND RESIDING AT SHAJI MANDIRAM, KARUVELIL P.O., EZHUKONE (VIA), KOLLAM.**

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7. SHINE S.S., S/O. K.SIVADASAN,
AGED 27 YERARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
KOLLAM AND RESIDING AT SABU SADANAM, THALUTHALA,
KOTTIYAM P.O., KOLLAM.

8. C.HARIMOHAN,
S/O. K.P. CHANDRASENAN PILLAI, AGED 36 YEARS,
P.S.C. EMPANELLED CONDUCTOR, KERALA STATE ROAD
TRANSPORT CORPORATION, KOLLAM AND RESIDING AT
"KARTHIKA", NJAREKKAL, PERINADU P.O., KOLLAM.

9. U.VINOD, S/O. UNNIKRISHNA PILLAI,
AGED 27 YEARS, P.S.C. EMPANELLED COUNDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM
AND RESIDING AT LAKSHMI NILAYAM, THEKKECHERI,
KANJAVILI P.O., KOLLAM.

10. MANIKANTAN S., S/O.K.SUBBAIYYA ASARI,
AGED 32 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM
AND RESIDING AT S.G.BHAVAN, KC/1900,CUTCHERRY P.O.
KOLLAM.

11. M.RAJENDRAN PILLAI, S/O. MADHAVAN PILLAI
AGED 38 YEARS, P.S.C. EMPANELLED CONDUCTORS,
KERALA STATE ROAD TRANSPORT CORPORATION,
KOTTARAKKARA AND RESIDING AT PULIKKAL,
KIZHAKKEKKARA, KUDAVATTOOR P.O., ODANAVATTOM(VIA),
KOLLAM.

12. K.S.JAYAKUMAR, S/O. P.KARUNAKARAN,
AGED 27 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
CHADAYAMANGALAM AND RESIDING AT VIJAYAMANDIRAM,
POOVATTOOR WEST, MAVADI P.O., KOLLAM.

13. S.SHIBU, S/O. K.SIVADASAN,
AGED 29 YEARS, WORKING AS P.S.C. EMPANELLED
CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION,
PAZHANAPURAM AND RESIDING AT SABU SADANAM,
THAZHUTHALA, KOTTIYAM, KOLLAM.

14. G.PREETHILAL, S/O. N.GOPALAKRISHNAN,
AGED 27 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
PATHANAPURAM AND RESIDING AT PUTHUVASSERIL VEEDU,
ELIKKATTUR P.O., PIRAVANTHOOR, PUNALUR, KOLLAM.

15. A.ASHOKAN, S/O. ANEMELAN,
AGED 24 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
KOTTARAKKARA AND RESIDING AT PAZHAVILA VEEDU,
EDAVATTOM, KARUVELIL P.O., KOLLAM.

16. NAUSHAD A., S/O. MOHAMMAD MUSTAFA,
AGED 32 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
KOTTARAKKARA AND RESIDING AT NAZEEMA MANZIL,
NEELESWARAM P.O., NEDUVATHOOR, KOLLAM.

17. SHINY E., D/O. EARNEST M.,
AGED 27 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM
AND RESIDING AT KINARAVILA VEEDU, KUMBALAM,
MULAVANA (VIA), KOLLAM.

18. PRASANTH KUMAR P.R.,
S/O. RAJENDRA KURUP, AGED 29 YEARS, P.S.C.
EMPANELLED CONDUCTOR,KERALA STATE ROAD CORPORATION
KOLLAM AND RESIDING AT UDAYA BHAVAN, ELAMKULAM,
KALLUVATHUKKAL P.O., KOLLAM.

19. CIBI A., S/O. ABDUL KHADER KUNJU,
AGED 35 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM
AND RESIDING AT CHEMMANUVILA VEEDU, KOTTIYAM P.O.,
KOLLAM.

20. BIJU S., S/O. N.SASIDHARAN NAIR,
AGED 29 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION, KOLLAM
AND RESIDING AT N.S. BHAVAN, KOIPPADU,
CHATHANNOOR P.O., KOLLAM.

21. REGHU R., S/O. RAMAKRISHNA PILLAI,
AGED 29 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
KOTTARAKKARA AND RESIDING AT NAMBUMADATHIL,
POOVATHOOR EAST, KALAYAPURAM P.O., KOLLAM.

22. M.UDAYAKUMAR, S/O. MADHAVAN,
AGED 34 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
KOTTARAKKARA AND RESIDING AT CHERUPALOTHU VEEDU,
EZHUKONE P.O., KOLLAM.

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23. S.SATHISH KUMAR, S/O. SADASIVAN NAIR G.,
AGED 29 YEARS, P.S.C. EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
KARUNAGAPPALLY AND RESIDING AT PRASANNA NILAYAM,
PADINJATTAKKARA P.O., THEVALAKKARA, KOLLAM.

24. SHEEJITH V.C., S/O. CHANDRAN,
AGED 32 YEARS, P.S.C. EMPANELED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
KANNUR AND RESIDING AT KRISHNAM VEEDU,
DHARMADOM P.O., KANNUR.

25. SANTHOSH KUMAR, S/O.KONHAN, AGED 32 YEARS,
P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C. KANNUR
AND R/A. AT KONJANANDYVILA HOUSE, PATHAYAKUNNU P.O
KANNUR.

26. JOHN BOSCO, S/O.FRANKLIN, AGED 34 YEARS,
P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C. THIRUVALLA
AND R/A. AT PRASAD MANDIRAM, KARALI JUNCTION P.O.,
SASTHAMKOTTA.

27. REGHUNATHAN PILLAI,S/O.APPUKUTTAN PILLAI
AGED 31 YEARS, P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C.
THIRUVALLA AND R/A.S.S.VIHAR, NETHIYADI, PANMANA,
EDAPPALLIKOTTA P.O. KOLLAM.

28. S.BABY, S/O.SANKARAN, AGED 32 YEARS,
P.S.C.EMPANELLD CONDUCTOR, K.S.R.T.C.
KARUNAGAPPALLY.

29. B.HEMACHANDRAN, S/O.S.BHARGAVAN, AGED 42
YEARS, P.S.C. EMPANELLED CONDUCTOR, K.S.R.T.C.
EDATHUA AND R/A. VALAVIL HOUSE, CHITTOOR PAMMANA,
PAMMANA P.O. KOLLAM.

30. P.R.RAJEEV, S/O.RAMACHANDRA NAIR,
AGED 31 YEARS, P.S.C.EMPANELLED CONDUCTOR,
K.S.R.T.C. AND R/A. AT NEMITHARAYIL, KLAPPANA P.O.
KOLLAM.

31. SUDHEER BABU, S/O.KAMALASANAN, AGED 31 YEARS,
P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C.
KARUNAGAPPALLY, AND R/A. AT PEEDIKAYIL,
KOZHIKKALUMUKKU, S.V.MARKET P.O.,
KARUNAGAPPALY, KOLLAM.

32. JAYAKUMAR.R. S/O.RAMACHANDRAN,
AGED 28 YEARS, P.S.C.EMPANELLED CONDUCTOR,
K.S.R.T.C. THIRUVALLA AND R./A,. MULANTHARAYIL
PULIYARVANCHI EAST, THAZHAVA P.O.
KARUNAGAPPALLY.

33. SIVAKUMAR.D. S/O.DHARMA RAJAN, AGED32 YEARS,
P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C. EDATHUA,
AND R/A. AT MANNEL, KOLLAKKAPURA, KLAPPANA,
KOLLAM.

34. AJEER, S/O.BASHEER, P.S.C.EMPANELLED
CONDUCTOR, K.S.R.T.C. KARUNAGAPPALLY AND R/A.
AT ANEESH MANZIL, MEDUMPURAM WEST, NEDUNGOLAM P.O.
KOLLAM.

35. SREEKUMAR, S/O.P.K.THANKAPPAN, AGED 32 YEARS,
P.S.C. EMPANNELLED CONDUCTOR, K.S.R.T.C.
KARUNAGAPPALLY AND R/A. PADIPPURAKKAL,
THEKKETHIL, KADAPPA, MYNAGAPPALLYP.O.
KOLLAM.

36. VISOL, S/O.KANAKARAJAN, AGED 28 YEARS,
P.S.C.EMPANELLED, CONDUCTOR, K.S.R.T.C.
KARUNAGAPPALLYAND R/A.PUTHENPURAYIL PADA NORTH,
KARUNAGAPPALLY.

37. BIJU.G. S/O.GOPINATHAN, AGED 28 YEARS,
P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C.
KARUNAGAPPALLY AND R/A. PEEDIKA VADAKKATHIL,
PANMANA, CHAVARA P.O. KOLLAM.

38. S.SANTHOSH KUMAR, S/O.SADANANDAN, AGED
27 YEARS, P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C.
KARUNAGAPPALLY, AND R/A. PALATHUNDIL THEKKETHIL,
KIDANGAYAM VADAKKU, PATHARAM P.O. KOLLAM.

39. K.ANIL KUMAR, S/O.KARUNAKARAN,
AGED 31YEARS, P.S.C. EMPNALLED CONDUCTOR, K.S.R.T.C.
EDATHUA AND R/A. KOCHUVEETTIL, KLAPPANA P.O.
KOLLAM.

40. BINU.S.KUMAR, S/O.SUKESHAN, AGED34 YEARS,
P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C.
KARUNAGAPPALLY AND R/A. VIDHU BHAVAN,
KLAPPANA P.O. KOLLAM. OACHIRA.

41. VIDHU.C.V. S/O.CHELLAPPAN, AGED 31 YEARS, P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C. KARUNAGAPPALLY AND R/A. THOPPIL PUTHEN VEEDU, ARIMALLOOR P.O. KOLLAM.

42. ABDUL SALIM.H, S/O.HAMEED KUTTY.M. P.S.C.EMPANELLED CONDUCTOR, K.S.R.T.C. KARUNAGAPPALLY AND R.A. THUNDIL KIZHAKKATHIL VEEDU PULIYOOR VANCH SOUTH, EDAKKULANGARA P.O. KARUNAGAPPALLY.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:
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1. THE KERALA STATE ROAD TRANSPORT CORPORATION, EAST FORT, TRANSPORT BHAVAN, THIRUVANANTHAPURAM, REP. BY ITS MANAGING DIRECTOR.

2. THE KERALA PUBLIC SERVICE COMMISSION, PATTOM P.O. THIRUVANANTHAPURAM. REP. BY ITS SECRETARY.

BY ADV. SRI.K.PRABHAKARAN, SC, K.S.R.T.C for R1
SRI.P.C.SASIDHARAN, SC, KPSC for R2
BY SR.GOVT.PELADER SMT. M. LALITHA NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/01/2007 ALONG WITH WPC NO. 28368 OF 2004 AND CONNECTED CASES, THE COURT ON 6/03/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF NOTIFICATION – CATEGORY NO.195/1997 DTD. 25/11/1997 IN THE KERALA GAZETTE ISSUED BY THE SECOND RESPONDENT.**
EXT.P2;	**COPY OF JUDGMENT DTD. 25/07/2003 IN O.P.NO.36464/2002N PASSED BY THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.**
EXT.P3:	**COPY OF INTERIM ORDER DTD. 21/11/2003 IN W.A.NO. 1860/2003 IN O.P.NO.36464/2002 N.**
EXT.P4:	**COPY OF COMPUTERISED DAILY COLLECTION STATEMENT FOR 13/08/2004 (FRIDAY) ISSUED BY THE K.S.R.T.CORPORATION.**
EXT.P5:	**COPY OF STATEMENT OF SUMMARY OF THE STRENGTH OF THE K.S.R.T.CORPORATION.**
EXT.P6:	**COPY OF JUDGMENT DTD. 28/12/2004 IN W.A.NO.2304/2004 PASSED BY THE HON'BLE HIGH COURT OF KERALA.**
EXT.P7;	**COPY OF MEMORANDUM NO.PL 10-027430/04 DTD.01/11/2004 ISSUED BY THE FIRST RESPONDENT.**
EXT.P8:	**COPY OF MEMORANDUM NO.PL10-027430/04 DTD. 14/12/2004 ISSUED BY THE FIRST RESPONDENT TO THE UNIT OFFICERS.**
EXT.P9:	**COPY OF DAILY COLLECTION STATEMENT FOR 31/12/2004 (FRIDAY).**
EXT.P10:	**COPY OF STATEMENT GIVING CATEGORYWISE STRENGTH AS ON 01/01/2005 IN THE KERALA STATE ROAD TRANSPORT CORPORATION RELEASED BY THE COMPUTER SECTION.**
EXT.P11:	**COPY OF DAILY COLLECTION STATEMENT FOR 01/01/2005 SATURDAY.**

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WPC.NO.18497/2004 B

EXT.P12: COPY OF THE LETTER NO.P10/15/2006 DTD. 12/07/2006 ISSUED BY THE PUBLIC INFORMATION OFFICER, O/o. CHAIRMAN AND MANAGING DIRECTOR, KSRTC, TRANSPORT BHAVAN, TRIVANDRUM.

EXT.P13: COPY OF THE LETTER NO.P10/4/2006 DTD. 3/06/2006 ISSUED BY PUBLIC INFORMATION OFFICER, KSRTC FOR CHAIRMAN AND MANAGING DIRECTOR TO BINDHU V.PAI, CHERTHALA.

RESPONDENT'S ANNEXURE:

ANNEXURE R1: COPY OF THE DETAILS OF AVERAGE NUMBER OF EMPANELLED CONDUCTORS ENGAGED FROM THE LIST OF KERALA PUBLIC SERVICE COMMISSION AND THE EMPANELLED CONDUCTORS FROM OUTSIDE, FURNISHED FROM THE OFFICE OF THE MANAGING DIRECTOR KSRTC TO THE STANDING COUNSEL FOR KSRTC ALONG WITH THE COVERING LETTER DTD. 25/06/2005.

ANNEXURE R1(A): COPY OF THE LIST OF PERMANENT CONDUCTORS AS ON 31/12/04.

/TRUE COPY/

KSS

K. M. JOSEPH, J.

W.P.C NOS. 18497/04B, 28368/04B,

28746/04V, 33329/04P, 37348/04U,

37557/04U, 23545/05C & 26022/05W

Dated this the 6th March, 2007

JUDGMENT

The question that falls for decision in this batch of Writ Petitions relates to the number of vacancies that existed in the cadre of Reserve Conductor as on 31.12.2004. The Public Service Commission (hereinafter referred to as the Commission) prepared a list consisting of 14000 candidates and published it on 18.9.2001 for appointment to the post of Reserve Conductors. It is the admitted case of the parties that the said list expired on 31.12.2004. By an interim order, this Court directed the Kerala State Road Transport Corporation (hereinafter referred to as the Corporation) to report 2564 vacancies with the rider that no advice need be made by the Commission. It would appear, however, that the Corporation

has in fact reported only 2112 vacancies.

2. I heard learned counsel for the parties. Petitioners have filed Affidavits. They also relied on number of documents. Many are said to be computer generated documents showing the Schedules, number of Conductors, Daily Collection Statement, etc. They have also produced orders under the Freedom of Information Act. Case of the Corporation is that in fact all the vacancies have been reported. A Counter Affidavit has been filed by the Corporation, dated 20.10.2004. This is followed by an Additional Counter Affidavit dated 7.12.2004, Statement dated 27.12.2004, another Statement dated 28.6.2005, Affidavit filed by the Executive Director dated 21.7.2005, Additional Counter Affidavit dated 22.8.2005, Statement dated 2.3.2006 and the Affidavits of the Executive Director dated 18.7.2006, 20.11.2006 and 18.12.2006.

3. I shall refer to the pleadings in gist of the Corporation in the aforesaid Affidavits and Statements. In the original

Counter Affidavit dated 20.10.2004, it is stated, inter alia, as follows:

The rank list was published on 19.9.2001. On the basis of the requisition of the Corporation for 2178 vacancies, the Commission made advice. The candidates were appointed. Thereafter, 835 NJD vacancies were reported. The Public Service Commission furnished advice list of 835 vacancies. Again, 307 vacancies were reported as NJD vacancies and the Commission made advice to 307 vacancies. The Corporation made appointments. In fact there were uneconomic services which were stopped. On 28.5.2004, the Corporation reported 168 NJD vacancies, followed by 851 fresh vacancies on 15.6.2004, making a total of 1019 vacancies. The Commission advised and the Corporation appointed. On 30.9.2004, the Corporation reported 719 fresh vacancies. It is pointed out that empanelled Conductors are indispensable as the Conductors take leave. There are festival seasons and the services of empanelled

Conductors are needed. Pursuant to the Judgment in OP No.37878/01, 5000 candidates were advised on empanelled basis. But, only nearly 2000 were reported. There was a further PSC list for empanelled Conductors consisting of 3000 persons. It is stated that 8000 have been appointed as empanelled Conductors in place of the old empanelled Conductors.

4. In the Counter Affidavit dated 7.12.2004, the case set up is as follows:

1) Average number of buses for the last 3 months.	3700
2) Number of Conductors required at 2.75 per bus.	10175
3) Conductors available.	9553
4) Short	622
5) Retirement vacancies as on 31.12.2004.	18.

It is stated that the shortage is 640. It is also urged that the All India average is 2.35. In Karnataka it is 1.85 Conductors per

bus. In Andhra Pradesh, number of Conductors per bus is shown as 2.01. In Utter Pradesh, it is shown as 2.13. In future, the Corporation projects the ratio to be pegged at 2.50. Also, it is pointed out that fixing of schedules may be unscientific. If the schedule is less than 7 hours, one will suffice, while if it is more than 7, more would be required. It is also pointed out that as per the Norms, buses which are ten years or more old or have run ten lakhs kilometres, have to be scrapped. It is pointed out that as on 7.12.2004, Corporation has 598 such buses.

5. In the Statement dated 27.12.2004, among other things, it is stated that at present there are 9553 permanent Conductors. Corporation reported 992 vacancies of which 640 were reported on 4.12.2004 and 352 subsequently. It is stated that with the advice of 992 candidates, there will be 10527 Conductors.

6. In the Statement dated 28.6.2005 filed by first respondent, Ext.R1 is produced which gives the details of the average number of PSC empanelled Conductors and Employment Exchange hands. PSC empanelled Conductors are

shown as 1558 while the empanelled hands from outside are shown as 2165. Thereafter, it is pointed out that substantive vacancies are 699 from new 254 services launched, 175 from promotion vacancies, 25 from retirement vacancies and 700 NJD vacancies making a total of 1599.

7. On the basis of the interim order dated 15.7.2005, the Executive Director has filed an Affidavit on 21.7.2005. Therein, it is, inter alia, stated as follows:

There were 9553 permanent Conductors on 4.12.2004. It consisted of two categories: (1) permanent and (2) provisional Conductors appointed on PSC advice against permanent vacancies and they were eligible for absorption as permanent Conductors. The said 9553 Conductors do not include any daily waged Conductors from empanelled or any other person other than PSC recruits and persons appointed on dying-in-harness scheme. Likewise, it is stated that there are 1558 empanelled Conductors from the unadvised PSC list, since February, 2004. Further, it is stated that there are 2165 Conductors. They in turn

are made up of two categories: 1317 were engaged from the general public since 1992, of and on, according to availability of vacancies. The balance 848 out of the 2165 empanelled Conductors are drawn from Employment Exchange hands, it is stated. They were appointed during 1999 - 2000 subject to availability of vacancies.

8. In the Additional Counter Affidavit dated 22.8.2005, it is pointed out that the substantive vacancies in the Statement dated 28.6.2005 were as on 1.6.2005. It is pointed out that even according to petitioners' case, there are 9741 permanent Conductors which are in excess of 9553 by 153. It is stated that the direction in Writ Petition No.37878/01 is not violated. It is contended that in Writ Petition No.16505/05, the Court directed to engage the panelists as provisional Conductors from the expired list of the Commission and it is complied with. It is pointed out that sufficient candidates did not join and, therefore, Corporation was compelled to engage empaneled Conductors from outside, which is not against substantive vacancies. There

is urgency, it is pointed out, and it is necessary to avoid cancellation of services. It is pointed out that 3673 are the average daily operations during 2004 which are rounded of to 3700. There is provision for 128 new buses. It is pointed out that the schedule for each day will vary. The date 1.1.2005 is not relevant, it is pointed out. It is stated that number of buses operated on 31.12.2004 is 3690. Number of buses operated on 1.1.2005 is stated as 3754.

9. In the Statement dated 2.3.2006, the earlier figures, namely, there being 3700 schedules and shortage of 640 are referred to. It is also pointed out that in fact, 640 vacancies were reported inclusive of 364 NJD vacancies, besides 352 vacancies. Hence, as on 31.12.2004, there were only 700 NJD vacancies, it is stated.

10. In the Affidavit dated 18.7.2006 filed by the Executive Director pursuant to the interim order of this Court, the split up details of permanent Conductors, namely 9553 is given as (1) 7011 permanent Conductors and (2) 2542

provisional Conductors. The so called provisional Conductors who are stated to have been later appointed on completion of 240 days, are now working as permanent Conductors, it is stated. With reference to Annexure VI produced along with the Statement filed by counsel for petitioner in Writ Petition No.28746/04 dated 26.7.2006, it is contended that the schedule position of the Corporation as on 1.1.2005 is 3969. On the strength of the same, it is pointed out that for maintaining 2.75 Conductors per schedule, there must be 10915 Conductors and, therefore, there is a deficiency of 1362 i.e. 10915 - 9553.

11. Learned counsel for the petitioners would submit that even without referring to the pleadings and documents, the number of vacancies can be ascertained. The reasoning is as follows:

On the basis of Annexure VI, as already pointed out, the total number of Conductors would be 10915. It is pointed out that there would be deficiency of 1362 Conductors as on 31.12.2004, even proceeding on the basis that there are 9553

permanent Conductors as on 31.12.2004. They referred to the Counter Affidavit filed by the Public Service Commission. Therein at Sl. No.6, the total number of vacancies reported are shown as 851 + 168 NJD vacancies. They were shown as advised on 7.8.2004. In the Counter Affidavit filed by the Corporation dated 20.10.2004, there is a statement which reads as follows:

> "All the Public Service Commission empanelled Conductors appointed upto 5.10.2004 are absorbed as Reserve Conductors in regular service."

They contended that going by the Affidavit filed by the Executive Director, it is stated that 2542 provisional Conductors were available as on 31.12.2004. The Commission in the Counter Affidavit has stated that 719 fresh vacancies were reported on 30.9.2004. Annexure IX produced along with the Statement dated 24.8.2006 is an order of appointment which is seen dated 4.1.2005. It is, therefore, contended that they were all appointed after 31.12.2004. Same is the position in respect

of 276 fresh vacancies and 364 NJD vacancies which were reported on 4.12.2004. It is pointed out that the Commission advised candidates only on 31.3.2005. On 15.12.2004, 352 fresh vacancies are shown as reported in the Counter Affidavit filed by the Commission. In regard to the said vacancies, PSC advice was made only on 31.3.2005. Thus, it is contended that 1711 candidates were advised by the Commission only after 31.12.2004 and they could be appointed only after 31.12.2004. It is also contended that going by sl. No.6 in the Counter Affidavit of the Commission, there were 851 fresh + 168 NJD vacancies. It was equal to 1019. Of the same, 364 did not join and these 364 are shown as NJD vacancies at Sl. No.8 of the Counter Affidavit filed by the Commission. Therefore, 364 has to be deducted from 1019, it is contended. Counsel relied on the Additional Counter Affidavit dated 7.12.2004 to show that 364 were NJD vacancies which arose from 1019 vacancies advised as aforesaid. Therefore, they would submit that even if 1711 vacancies are reduced from 2542 which is the figure relied on by

the Corporation as the Provisional Conductors who were absorbed, there would be shortage of 841 Conductors. Thus, adding 1362 Conductors as already referred to, to 841, there would be 2203 vacancies which could be directed to be advised from the vacancies already reported as per the order of this Court. If support is drawn from the argument that 364 vacancies were non joining vacancies arising out of 1019, as already referred to, there would be 1887 vacancies and adding 1362 which is a common figure to both calculations, there would be 3249 vacancies, it is contended. It is also pointed out by the counsel that this is a case where the true position can be ascertained, if this Court directs the Corporation to disengage the empanelled Conductors, 2168 in number who are working for a long period of time without the sanction of law and what is more, contrary to the decision of this Court in Kerala Public Service Commission Reserve Conductors Rank Holders Association and Others v. State (1996 (2) KLT 306). It is pointed out that the Corporation is reflecting its stand of

continued patronage to rank outsiders at the expense of those who have undergone the process of selection known to law.

12. An interim order was passed on 1.11.2006 which is extracted hereunder:

> *"The case consistently set up by the KSRTC in the statements and the affidavit filed by the Executive Director (Operations) is that there should be 10175 conductors and as on 4.12.2004 there were 9953 conductors working. Out of the same, it is stated that there are 7011 permanent conductors and there are 2542 conductors who were appointed as provisional conductors who were later on appointed on regular basis. In the statement dated 2.3.2006 it is stated that there were 640 vacancies of conductors and they were reported. Appointments were also made against another 352 vacancies, it is stated, which were reported.*
>
> *2. However, I note on the basis of Annexure IX in W.P.(C) 28746 of 2004 produced that persons were appointed as provisional conductors in January, 2005. Likewise, as is clear*

from the counter affidavit filed by the Public Service Commission that 719 fresh vacancies were reported vide letter dated 30.9.2004. Date of advice is shown as 5.11.2004. Annexure IX appointment refers to said advice. 276 fresh vacancies were reported on 4.12.2004 and advice is seen made on 31.3.2005. The same is the case of 364 NJD vacancies. Again with regard to 352 vacancies reported on 15.12.2004, the date of advice is shown as 31.3.2005. In such circumstances, prima facie it is clear that the statements made in the affidavits filed on behalf of the Corporation to the effect that there were 2542 permanent conductors, who were made up of provisional conductors appointed on advice of the PSC as on 4.12.2004 is incorrect. In the counter affidavit dated 20.10.2004 filed by the Corporation it is stated as follows: "All the PSC empanelled conductors in service are appointed upto 5.10.2004 are absorbed as reserve conductors in regular service." If that be so, the figure 7011 shown as permanent conductors would take in all the conductors who were already permanent and who were appointed

provisionally and later on absorbed as permanent as on that day. If that be so, the number of conductors shown as 2542 as provisional conductors who were later absorbed cannot be correct.

3. Learned counsel for the Corporation would submit that he will place an affidavit on record explaining these serious discrepancies in the affidavits. I would prima facie be inclined to think that the statements are statements which are false. However, I feel that an opportunity should be given to the Corporation to clarify these aspects. In particular it shall be stated as to when the 2542 provisional conductors who are alleged to have been later absorbed and working as permanent conductors as on 4.12.2004 were appointed as provisional conductors and when they were absorbed. The affidavit shall be filed by the Executive Director who filed the earlier affidavits on or before 8.11.2006.

Post on 8.11.2006."

Pursuant to the same, an Affidavit dated 20.11.2006 was filed. Therein, it is, inter alia, stated as follows:

On detailed scrutiny, it is found that the total strength of the Conductors as on 4.12.2004 was 8006 (permanent - 7351, provisional - 655). It is admitted that the figure 2542 shown as provisional Conductors in the Affidavit dated 18.7.2006 was a discrepancy. Only 655 provisional Conductors were there in the place of 2542 as erroneously shown, and that others were already regularised vide Order dated 6.10.2004, it is stated. The above 655 Conductors were regularised as per Order dated 5.1.2006 along with others appointed subsequently. It is pointed out that 2257 provisional Conductors were appointed from PSC and from among dependents of deceased employees, and that these provisional Conductors were regularised with effect from 5.10.2004 vide Order dated 6.10.2004. After 5.10.2004, it is pointed out that 1014 provisional Conductors were appointed. It was stated that by order dated 11.10.2004, 1019 were appointed of which 655 joined rendering 364 as NJD. By order dated 17.12.2004, 719 were posted and 359 joined duty, thus rendering 360 NJD. It is thus that 1014 provisional Conductors

are stated to have been appointed and joined. Thereafter, the vacancy position of Conductors as on 31.12.2004 is shown on 31.12.2004 as 869.

13. Thereupon, Order dated 7.12.2006 was passed by this Court. It was noted in the said Order that 60 persons were shown as appointed in July, 2004 and regularised by order dated 6.10.2004. The contention of petitioners that regularisation is possible only on completion of 240 days, was noted. 360 persons were shown of the 719 persons as NJD. This Court further noted the contention based on the statement of the Corporation in the Statement filed in W.A. No.2317/04 to the effect that the requirement of Conductors as on 31.12.2004 is 10527, and that the stand taken by the Corporation in these proceedings was that there should be 10175 Conductors. This Court directed the Executive Director to file an Affidavit in regard to these aspects.

14. Consequently, an Affidavit dated 19.12.2006 came to be filed. As far as the question of regularisation of 60

Conductors by Order dated 6.10.2004 is concerned, it is pointed out in the Affidavit that sanction was accorded to regularise all empanelled Conductors appointed from the Kerala Public Service Commission list and from the select list of dependants of deceased employees under the dying-in-harness scheme, as Reserve Conductors/Drivers on daily wages. As regards the question as to when the 719 candidates became NJD is concerned, it is pointed out that the date is 31.1.2005. In regard to the statement contained in the Writ Appeal that the required number of Conductors as on 31.12.2004 was 10527, it is stated that the Conductors required to operate 3700 schedules (average) was 3700 X 2.75 = 10175. Thereafter, it is stated that Conductors required to operate 128 new schedules anticipated while commissioning 128 new buses was 352, namely 128 X 2.75, thus making up a grant total of 10527. It is lastly stated that these 128 buses were commissioned, but as the average number of buses operated during 2005 -2006 did not exceed 3700, the strength was worked out as 3700 X 2.75 = 10175.

15. Counsel for the Corporation, Shri K. Prabakaran would submit that it is for the employer to decide on the basis of the felt necessities as to the number of employees there should be and the schedules there should exist. He would reiterate the discrepancy in the number of employees required as stated in the Affidavit filed in the Writ Appeal, namely 10527 and the figures 10175 as is projected throughout in the Affidavit in these proceedings as being for the reasons stated in the Affidavit dated 19.12.2006. In fact, the stand taken by the counsel for the Corporation prior to the change in counsel was that the number of Schedules should be decided on the average schedules for the period of three months with reference to the date in 2004, which was precisely what the Corporation has adopted and thus it is that the number of schedules are rounded off to 3700. In fact, the former counsel would contend that the particulars relatable to the date 1.1.2005 relied on by the petitioners cannot be relied on. However, going by the latest Affidavit dated 19.12.2006, the figure 3700 is arrived at on the basis that 10527 was shown

as necessary on the basis of the anticipated 128 new schedules while commissioning new 128 buses. Apparently, the stand is that even if the buses are commissioned, the average number of buses operated during 2005 - 2006 did not exceed 3700 and, therefore, the strength was worked out at 10175.

16. It is clear that I am called upon to decide this question within the ambit of the powers available to me under Article 226 of the Constitution of India. It cannot be open to doubt that under Article 226, this Court is not without power to decide questions of fact. The decision must rest, however, upon material. There are computer generated documents produced by petitioners. The petitioners have produced documents showing the figure as to schedules as above 3900. I have to decide this dispute with the available materials, as I cannot drive the parties to another authority for adjudication, disputed though the question is.

17. I am inclined to think that the figure of 3700 can be accepted as the number of schedules operated. This is the figure

worked out on the basis of the average number of schedules. No doubt, petitioners have relied on a large number of documents to show that the number of schedules be fixed above that figure. However, I note that there are mostly documents referring to schedules as on particular days. Besides, Daily Collection Statements obviously relate to particular days. I am not unmindful of the fact that in arriving at the figure 3700, I must ignore the statement made by the Corporation itself in the Affidavit in the Writ Appeal, namely that the number of Conductors required is 10527. However, I must note that throughout in these proceedings, the stand taken by the Corporation is that the number of Conductors required is to be worked out on the basis that the number of schedules is 3700. No doubt, there is reference to the figure 10527 in the Statement dated 27.12.2004. I would proceed on the basis that it is the average number of buses over the certain period of time that is crucial for deciding the number of schedules. Number of schedules apparently vary from day-to-day. It is in such

circumstances that the number of schedules is to be worked out on the basis of the average schedules operated over a period of time. I cannot dub it as irrational or unfair. No doubt, the stand taken by the Corporation in the latest Affidavit, namely 19.12.2006 would show that it is based on the number of average schedules operated during 2005 and 2006. The number of vacancies is to be decided on the basis of vacancies that existed as on 31.12.2004. One way of looking at it would be and this is how the petitioners would want the matter to be viewed, namely the stand taken in the latest Affidavit dated 19.12.2006, is untenable in view of the fact that the number of average schedules is worked out in relation to the years 2005 and 2006. Another way of looking at this, is that the stand of the Corporation in the Affidavits in these cases has been that 3700 is the average number of schedules operated during the year 2004. In the latest Affidavit, that stand is not given a go-by as such. Apparently, even with the addition of 128 new schedules, the average for the years 2005 and 2006 remained

3700. Apparently, 10527 was arrived at on the basis of the anticipated 128 new schedules anticipated. But, apparently after they were commissioned, the working of the services according to the Corporation, would show that the number of schedules is 3700 in 2005 and 2006. In such circumstances, I feel that I must proceed on the basis that there must be 10175 Conductors (3700 X 2.75). If that be so, the total number of Conductors would be 10175.

18. As far as the other two aspects, namely the absorption of sixty provisional Conductors without completion of 240 days and the question as to whether 360 NJD vacancies also should be made available for being appointed from the list are concerned, I think that they are explained against the petitioners in the Affidavit dated 19.12.2006. Apparently, it is on the basis of the decision taken that even sixty persons provisionally appointed came to be absorbed without waiting for completion of 240 days. Further, as far as when 360 vacancies out of the 719 vacancies against which appointments were made

became NJD, it is clear that they became NJD only on 31.1.2005. Therefore, it is only thereafter that those vacancies could possibly be reported. Since the list itself expired on 31.12.2004, it is clear that the petitioners cannot lay a claim to those vacancies which could not be said to have even arisen within the currency of the list in question.

19. Petitioners rely on the decision of this Court in Kerala Public Service Commission Reserve Conductors Rank Holders Association and Others v. State (1996 (2) KLT 306), wherein the Court held as follows:

> *"After publishing ranklist by P.S.C., Corporation resorted to engagement of provisional hands - The procedure is violative of Articles 14 and 16 of the Constitution of India.....Appointment of provisional Conductors and Empanelled Conductors engaged by the Kerala State Road Transport Corporation for more than 240 days during a calendar year which continued for more than three years - In such circumstances it could be presumed that there exists regular vacancy in the Corporation."*

They also relied on Ext.P2 Judgment of this Court in W.P.(C) No.18497/04. It is their contention that contrary to the Judgments, large number of persons have been recruited and are continuing. It is their contention that if the services of these persons are terminated, the Corporation would be compelled to come out with the actual position as to substantive vacancies and persons can be advised against all the vacancies which have been reported pursuant to the interim order of this Court. Per contra, learned standing counsel for the Corporation would contend that the right of the petitioners is to be determined on the basis of the substantive vacancies which, in turn, is to be calculated on the basis of the total number of Conductors required in terms of the ratio 2.75 per bus and going by 3700 schedules, the actual number of vacancies to be filled up from the list in question is to be worked out. In this regard, I feel that I need not go into the correctness and legality of KSRTC retaining nearly 2165 empanelled hands. I feel that the legal right of petitioners is to be ascertained on surer foundations,

namely the vacancies required to be filled up from the list based on the number of employees in terms of the undisputed ratio of 2.75 per bus. I have already arrived at the finding that the total number of schedule is to be treated as 3700. Thus, the total number would be 10175.

20. I am inclined to proceed on the basis, therefore, that the total number of Conductors is to be worked out on the basis of the average number of schedules required as 3700. On this basis, the requirement of Conductors would be 10175. I would place reliance on the figures as shown in the Affidavits dated 20.11.2006 and 18.12.2006 as per which the number of Conductors required is worked out as 869. I would think that this figure represents the total number of Conductors required as on 31.12.2004. In such circumstances, the Writ Petitions are allowed and the following directions are issued:

There will be a direction to the Public Service Commission to render advice as against 869 vacancies of Reserve Conductors against the vacancies which have been reported to it as per the

interim order passed by this Court, from the rank list in question dated 18.9.200 in accordance with law, within a period of one month from the date of receipt of a copy of this Judgment. Upon receipt of the advice, the Corporation shall proceed to appoint the persons advised without any further delay.

Kbk. **K. M. JOSEPH, JUDGE**